



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SOME RECENT TENDENCIES IN STATE CONSTITUTIONAL DEVELOPMENT, 1901-1908¹

W. F. DODD

Johns Hopkins University

This paper confines itself to some of the more important general tendencies in state constitutional development during the years from 1901 to 1908,² leaving entirely aside any discussion of the unsuccessful efforts to obtain constitutional revision in New England, and mentioning only incidentally the Southern constitutional provisions with reference to the exercise of the suffrage.

The past twenty years have been perhaps the period of greatest activity in state constitutional development; and are comparable with the two decades, 1860-1880, during which, however, constitutional activity was to a large extent confined to the Southern States, as a result of the extraordinary conditions of the civil war and reconstruction periods. But the constitutional development during the past twenty years has been different from that of earlier periods in that it has been to a greater extent accomplished by constitutional amendments rather than by the adoption of new constitutions. During the past eight years, to which this discussion is confined, four new constitutions have been adopted: Alabama, 1901; Virginia, 1902; Oklahoma, 1907; and Michigan, 1908.³ From 1901 to 1907 one hundred and eighty-one state constitutional amendments were submitted to and adopted by the people, and during the same period one

¹A portion of Dr. Dodd's address will appear in the *Political Science Quarterly* under the title "The Growth of Judicial Power."

²For a review of constitutional changes from 1895 to 1903, see an article by Prof. J. B. Phillips in the *Yale Review*, XII, 389.

³For discussions of these constitutions see the following articles: McKinley, A. E. *Two New Southern Constitutions*, *Political Science Quarterly*, XVIII, 480; Sanborn, J. B. *The Oklahoma Constitution*, *American Law Review*, XLII, 362; Fairlie, J. A. *The Constitution of Oklahoma*, *Michigan Law Review*, VI, 105; Fairlie, J. A. *The Michigan Constitutional Convention*, *Michigan Law Review*, VI, 533.

hundred and one amendments were submitted to and rejected by the people; twenty-three amendments were adopted in Louisiana, eighteen in California, twelve in Michigan, ten in Missouri, and eight each in the states of Colorado, New York, South Carolina, and South Dakota. In 1908 one hundred and one amendments were submitted to a vote of the people in the several states, of which fifteen were voted upon in Louisiana, fourteen in California, ten in Oregon, and eight in Missouri.⁴

Because of the great mass of detail now introduced into most of our state constitutions and of the fact that they contain much matter of private law, frequent amendments have become necessary in order to adjust constitutional provisions to changing conditions.⁵ The tendency to embody statutory matter in state constitutions continues, and the furthest point yet reached in this development is represented by the new constitution of Oklahoma. The adoption of new constitutions and the process of constitutional amendment have become active organs of legislation superior to the ordinary state legislatures.⁶ Extreme cases may easily be cited of provisions being inserted in constitutions which might much better have been left to state legislation; such, for example, as the provision of the Oklahoma constitution which prescribes the tests to be applied to determine the purity of kerosene oil, and a North Dakota amendment of 1904 changing the name of the state school for the deaf and dumb. It should be said, however, that the constitution recently adopted by the state of Michigan is an exception to the general tendency in that it confines itself rather closely to matters which may properly be termed constitutional.

For many years the processes of constitutional amendment have been growing simpler and easier. The increased complexity of constitutions makes frequent amendment necessary, and is forcing the

⁴ Information regarding the final action of the people upon all of these amendments has not yet been received. All of the fifteen amendments voted upon in Louisiana were adopted by the people.

⁵ As, for example, the constitutional amendments and provisions made necessary in order to permit the use of voting machines, in Pennsylvania, 1901; California and Virginia, 1902; Connecticut, 1905; and Colorado, 1906. See the cases of *Nichols v. Election Commissioners*, 196 Mass. 410; and *Helme v. Election Commissioners*, 149 Mich. 390.

⁶ Dealey, J. Q. *General Tendencies in State Constitutions*, American Political Science Review, I, 200.

simplification of the amending procedure. The amendment of state constitutions may now be accomplished with little difficulty in most of the states, although the amending procedure is still extremely cumbersome in some states, as, for example, in New Hampshire and Illinois.⁷

The tendency to make constitutional amendment easier has continued during the past eight years. A number of states require that constitutional amendments to be adopted shall receive a majority of all votes cast in the election at which they are submitted to the people. This provision makes amendment difficult because, even on questions of great popular interest, it is impossible to get all persons voting at an election to express themselves upon proposed constitutional amendments; amendments are thus often defeated because they have not received a majority of all votes cast at an election, even though a large majority of those voting on an amendment may have favored its adoption. In the attempt to obviate this difficulty Nebraska in 1901 and Ohio in 1902 provided by law that if a political party should declare itself in favor of a constitutional amendment, a straight vote for the ticket of that party should be counted as a vote for such amendment; the Ohio law was, however, repealed in 1908. Alabama by its constitution of 1901 provides that a majority of those voting on an amendment shall be sufficient for its adoption, substituting this plan for the more cumbersome one of requiring a majority of all votes cast in the election at which an amendment is submitted.⁸ Alabama has also made amendment easier by reducing from two-thirds to three-fifths the legislative majority required for the proposal of constitutional amendments. The state of Maine by an amendment of 1908 has shortened the time required for the adoption of an amendment, by requiring that an amendment proposed by the legislature shall be submitted to the people on the second Monday in September following its passage, whereas formerly amendments would not have been voted on by the people until the next biennial election. The Oklahoma constitution of 1907, in its provision for amendment upon the initiative of the legislature, provides for the proposal of

⁷ Garner, J. W. *Amendment of State Constitutions*, American Political Science Review, I, 213. The present provisions regarding state constitutional amendment are summarized in Stimson's *Law of Federal and State Constitutions*, pp. 355-357.

⁸ A proposed amendment in Mississippi attempting to accomplish the same purpose was defeated in 1902.

amendments by a majority of all members elected to each of the two houses, but adopts the somewhat cumbersome requirement that amendments shall receive a majority of all votes cast in the election at which they are submitted to the people.

Virginia in its new constitution of 1902 repeats from the constitution of 1869 the requirement that constitutional amendments be adopted by two successive legislatures before being submitted to the people. Oregon, however, in 1906 abandoned this mode of procedure, and now provides for the legislature's proposal of amendments simply upon the agreement of a majority of all members elected to each of the two houses.

The Michigan constitution of 1908 has taken an important step toward obtaining facility in constitutional amendment by providing, in addition to the power of the legislature to propose amendments, that amendments may be proposed by petition of 20 per cent of the total number of electors voting for the secretary of state at the preceding election. An amendment thus proposed by initiative petition must be submitted to a vote of the people unless the legislature in a joint convention of the two houses disapproves of the proposed amendment by a majority vote of all of its elected members. The real effect of this provision will probably be that all amendments petitioned for will be submitted to the people.

The distinction in *substance* between state constitutions and state statutes has almost entirely disappeared through the practice of embodying detailed legislative enactments in the constitutions. There now seems to be a tendency at least in the Western States to break down the *formal* distinction between constitutions and statutes, by using the same methods for the enactment of state laws and for the adoption of constitutional amendments.

Virginia and Oklahoma have made important provisions of their constitutions subject to amendment by legislative act.⁹ But the real distinction in form of enactment between constitutions and statutes is disappearing largely through the adoption of the initiative and referendum. The initiative and referendum amendments of Oregon, 1902 and 1906, and of Missouri, 1908, permit the adoption of constitutional amendments and of statutes in precisely the same manner. Both

⁹ Virginia, secs. 155, 156 l. Oklahoma, Art. IX, sec. 35; Art. XII, sec. 3; Art. XX, sec. 2. See the suggestion made by Dr. Whitten in New York State Library, *Review of Legislation*, 1901, p. 29.

amendments and statutes may be proposed by initiative petition and adopted by a vote of the people, independent of the legislative bodies. The amendment now pending for the purpose of introducing the initiative and referendum in North Dakota contains provisions of the same character. The Oklahoma initiative and referendum provision makes no distinction between constitutional amendments and statutes except that a petition of 15 per cent of the legal voters is required to initiate a constitutional amendment while only 8 per cent is required to propose measures of ordinary legislation.¹⁰ Under the provisions here referred to, it would seem that, except for the difference in the number of petitioners in Oklahoma, a measure may be called either a constitutional amendment or a law, at the discretion of those who propose it. Montana in its amendment of 1906 and Maine in its amendment of 1908 expressly provide that the popular initiative shall not apply to constitutional amendments, and thus leave to the legislature alone the initiation of amendments.

Heretofore the really fundamental distinction between statutes and constitutional amendments has been that amendments were required to be voted on by the people, while statutes were infrequently submitted to a popular referendum. Constitutional legislation thus involved a greater participation upon the part of the people than did statutory legislation. Oregon, Missouri, and Oklahoma now place constitutional legislation and the adoption of ordinary statutes upon practically the same level as far as the popular share in their enactment is concerned. Maine and Montana by withholding the initiative on constitutional amendments give less popular participation in the amendment of their constitutions than they do in the enactment of ordinary legislation; and they make the submission of amendments more difficult than that of laws by requiring a two-thirds vote of the legislature for the proposal of amendments to a vote of the people. Nevada, by its referendum amendment of 1904, makes it possible for laws to be submitted to a popular vote just as are constitutional amendments; but the amendment of the constitution is made more difficult than ordinary legislation by the requirement that amendments be adopted by two successive legislatures before being submitted to the people. By its initiative petition Michigan gives the

¹⁰ The rejected Missouri amendment of 1904 made a similar distinction between constitutional amendments and laws, by requiring a larger popular petition for the proposal of amendments.

people a greater share in constitutional legislation than in the enactment of ordinary laws, inasmuch as no popular initiative exists in that state for laws, and also in that the referendum on constitutional amendments is compulsory while that on ordinary legislation is optional with the legislature. On the whole, however, the adoption of the initiative and referendum is breaking down distinctions heretofore made between the processes of legislation and of constitutional amendment.

The first constitutional provision for the initiative and referendum with reference to state laws was that adopted by South Dakota in 1898; Utah followed in 1900 with a constitutional amendment intended to obtain the initiative and referendum upon state laws, but the Utah amendment was not self-executing, and the legislature of that state has never enacted legislation to carry its provisions into effect. Since 1900 the movement for the initiative and referendum has grown rapidly. Oregon by its amendments of 1902 and 1906 has provided for the enactment of laws and constitutional amendments by the people without the participation of the legislature, and has also made provision for a compulsory referendum upon laws or upon parts of any laws enacted by the legislature. Nevada in 1904 established a compulsory referendum upon state laws, but did not adopt the initiative. Montana in 1906 adopted the initiative and referendum for state laws. Oklahoma in 1907 adopted the initiative and referendum for state laws and constitutional amendments, applying the referendum also with reference to sections, items, or parts of any act of the legislature. The greatest gains for the initiative and referendum have been made in 1908. During this year Maine has adopted the initiative and referendum for laws; Michigan has adopted the initiative for constitutional amendments and the referendum upon state laws, the use of the latter however not being compulsory upon popular petition, it being left entirely to the legislative discretion as to whether a law shall be submitted to the people for approval. Missouri has adopted the initiative and referendum with reference both to laws and to constitutional amendments. Until recently this movement has been confined to the states of the further west, but the most significant thing in the development of the present year has been the adoption of these more popular forms of government in Maine, Michigan and Missouri.¹¹

¹¹ Reference may also be made to the constitutional amendment now pending in North Dakota. The development of the initiative and referendum in the

The movement toward more direct participation by the people in state government has not been confined to the initiative and referendum. Oregon in 1908 provided for the recall of all state and local officers upon petition and after an election, and thus puts public officials at all times subject to the will of the people. In 1908 also a constitutional amendment was adopted in Oregon permitting the legislature to establish proportional representation. Oklahoma in 1907 required its legislature to enact a law providing for a mandatory primary election system for the nomination of all candidates for state and local offices. California in 1908 adopted a similar constitutional provision requiring its legislature to enact a primary election law, but left it to the discretion of the legislature as to whether such a law should be made mandatory.

The movement toward more popular participation in government is evident in local as well as in state affairs. California in 1902 and 1906, and Missouri in 1902 extended their constitutional provisions by which cities are permitted to make, revise, and amend their own charters. California in 1906 adopted a constitutional amendment permitting cities to control the tenure of their officials, this amendment having been adopted in order to remove any doubt as to the power of cities to establish the recall with reference to municipal officials. In 1902 Colorado by a constitutional amendment authorized cities having more than two thousand inhabitants to make, revise, and amend their own charters. Oregon in 1906 gave the municipalities of that state power to enact and amend their charters, subject to the constitution and criminal laws of the state. An amendment to the Illinois constitution in 1904 empowered the legislature of that state to enact special laws to reorganize the government of the city of Chicago, but provided that laws so enacted should not go into effect until after they had been submitted to and adopted by the people of Chicago. Oklahoma in 1907 permitted cities having a population of more than two thousand inhabitants to frame and alter

states is not all represented by constitutional provisions. Illinois in 1901 adopted by statute an advisory referendum applicable both to the state and to municipal corporations. A popular vote in Delaware in 1906 decided in favor of the establishment of an advisory initiative and referendum. See Schaffner, Margaret A.: *The Initiative, the Referendum, and the Recall*, American Political Science Review, II, 32; *Popular Legislation in the United States. The Development of the System*, by C. S. Lobingier. *The Value of the System*, by J. B. Sanborn. Political Science Quarterly, XXIII, 577, 587.

their own charters. The new Michigan constitution gives cities and villages power to frame, adopt, and amend their charters, under general laws to be enacted by the legislature.¹²

Some progress has also been made in the introduction of the initiative and referendum with respect to municipal questions. Colorado in 1902 required cities framing their own charters to place therein provision for the initiative and referendum upon measures passed by their city councils. Oregon in 1906 applied the initiative and referendum to "all local, special, and municipal legislation of every character," but permitted cities and towns to determine the manner in which the initiative and referendum should be exercised with reference to their municipal legislation. The Oklahoma constitution of 1907 extends the initiative and referendum to counties, districts, and municipal corporations; and Maine by its amendment of 1908 permits cities to adopt the initiative and referendum. The constitutional amendments adopted during this period do not show the full development of popular control in municipal affairs, inasmuch as the initiative, referendum, and recall have in other cases been made applicable to cities either by state statute or by charters framed by the cities themselves.¹³

In discussing the movement for municipal home rule it should also be mentioned that the restrictions placed upon local and special legislation by the new constitutions of Alabama, Virginia, Oklahoma, and Michigan practically prevent special state legislation for particular cities, and thus necessarily give to the cities greater freedom in the management of their local affairs. With reference to the granting of franchises the new constitutions confer additional power upon municipal corporations, but also impose wise restrictions upon the use of such power. Alabama gives its cities absolute control over the use of their streets for public utilities or private enterprises, but forbids any town or city having more than six thousand inhabitants to grant a franchise for a longer term than thirty years. The Virginia constitution contains similar provisions, but requires in addition that municipal franchises be sold only after proper public advertisement,

¹² For a further discussion of this subject see Oberholtzer, *Home Rule for our American Cities*, Annals of the American Academy of Political and Social Science, III, 736; and the same author's *Referendum in America*, Chapter XIV. See also Maltbie, *City-made Charters*, Yale Review, XIII, 380.

¹³ For an account of the municipal referendum before 1900, see Oberholtzer, *Referendum in America*, 306-310.

and that an ordinance for such a purpose be passed by an affirmative vote of three-fourths of all members elected to the city council. Oklahoma permits its cities to engage in the business of supplying public utilities, limits franchises to a term of twenty-five years, and provides that they shall not be granted, extended, or renewed without the approval of the qualified electors. Michigan permits its cities and villages to acquire, own, and operate their public utilities; but cities and villages are forbidden to grant any franchise not revocable at will or to acquire any public utility unless such action is first approved by an affirmative vote of three-fifths of the electors of such city or village; franchises may not be granted for a longer term than twenty years. Colorado by an amendment of 1902 forbids a city to grant franchises except by a vote of its taxpaying electors.

In the state governments there has been a continued development toward the increase of the governor's power and the diminution of the power of the state legislature. Although the state executive power is badly disintegrated there would seem to be a slight tendency to increase the governor's administrative authority, both by statute and by constitutional provisions. The Virginia constitution of 1902 authorizes the governor to suspend executive officers of the state during the recess of the general assembly, the general assembly itself to decide at its next meeting whether the suspended officer shall be restored or removed. The governor of Oklahoma is given power to require information in writing under oath from all officers and commissioners of the state and from all officers of state institutions. By the Alabama constitution of 1901 and by the Michigan constitution of 1908 the governors are given increased power to require information in writing from the executive and administrative officers of these states.

But it is with reference to legislation that the increase of the governor's power is most apparent. Ohio by an amendment of 1903 conferred the veto power upon her governor, leaving only two states—Rhode Island and North Carolina—which have no form of executive veto upon state legislation. Virginia in 1902, Ohio in 1903, Kansas in 1904, Oklahoma in 1907, and Michigan in 1908, have conferred upon their governors the additional power to veto separate items in appropriation bills; there are now thirty-three states which confer this power upon their governors.¹⁴ With reference to the making of

¹⁴ Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missis-

appropriations Alabama also increases still further the executive power by authorizing the governor, auditor, and attorney-general of that state to prepare a general revenue bill, before each regular session of the legislature, to be submitted to the legislature for its information.

Ohio by amendment of 1903 confers upon its governor power to veto any section or sections of a bill presented to him and to approve other portions of the bill so presented, following in this respect the Washington constitution of 1889. The Alabama constitution of 1901 permits the governor to propose an amendment to remedy any feature of a bill which he does not approve, and if his proposed amendment is not adopted by the two houses, the bill to become law must be passed over the executive veto. The Virginia constitution of 1902 also gives the governor power to recommend the amendment of a bill if he approves its general purpose but disapproves any part thereof, and in this state the bill if amended by the two houses or if they fail to amend it in accordance with the governor's recommendation, is again returned to the governor for his approval or disapproval.

Although the state governors in no case possess more than a limited veto, subject to be overcome by subsequent legislative action, it should nevertheless be borne in mind that appropriation bills and other important acts are usually passed during the last days of legislative sessions when repassage over executive disapproval is practically impossible; the governor thus in many instances exercises what is equivalent to an absolute veto. A constitutional amendment adopted by California in 1908 increases from ten to thirty days the time within which the governor may approve bills after the adjournment of the legislature, and is clearly intended to give him more time to consider legislation which must fail unless he does approve it. Wisconsin in 1908 increased from three to six days the time within which the governor must disapprove a measure in order to prevent its enactment, evidently for the purpose of giving him more time to consider legislation. The constitutional provisions extending the veto power have, it would seem, the very definite purpose of placing

Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wyoming. See bulletin no. 1 of the Rhode Island Legislative Reference Bureau on *The Veto Power in the Several States* (Providence, 1907).

upon state governors a larger share of the responsibility for state legislative activities.

The introduction of the initiative and referendum for state laws will, however, weaken the governor's power over legislation. The constitutional provisions of South Dakota, Oregon, Montana, Oklahoma, and Missouri, and the proposed amendment in North Dakota, expressly provide that the veto power of the governor shall not extend to measures referred to a vote of the people; in Maine definite provision is made by which the governor's veto of measures initiated by petition may be overcome by the use of the referendum. The referendum in Maine, Oregon and Oklahoma, and the proposed referendum in North Dakota extend to sections or to parts of bills as well as to entire measures, and thus give to the people a revisory power over state legislation broader than that conferred upon the governors in any states except Washington and Ohio.¹⁵ Nevada by its amendment for the compulsory referendum, and Michigan in introducing the optional referendum apply the referenda only to laws enacted by the regular legislative organs of these states, and thus preserve the governor's influence over legislation.

The first state constitutions conferred almost the whole power of government upon the legislatures, but since the end of the American Revolution there has been a fairly constant movement away from legislative supremacy in the states. The distrust of legislatures has been to a large extent responsible for the extension of the powers of the other departments of government, and for the numerous specific limitations which have been placed upon the exercise of the legislative power. The diminution of legislative power has been brought about (1) by the assumption of legislative functions by constitutional conventions, and by the adoption of legislation through constitutional amendment; (2) by the extension of popular legislation through the adoption of the initiative, referendum, and recall; these institutions will almost necessarily reduce the already slight responsibility of state legislatures; (3) by the extension of the governor's share in legislation, so that a large part of the responsibility may be fixed upon him for legislation that is enacted; (4) by the imposition of positive restrictions upon the power of the legislature,

¹⁵ The referendum in these states, and in South Dakota, Montana and Missouri, however, does not apply to "laws necessary for the immediate preservation of the public peace, health, or safety."

by the granting to cities of control over their own governmental affairs, and by making legislative sessions less and less frequent.

Mississippi in 1890 took the first step toward quadrennial sessions by providing for one regular session of the legislature every four years, and for a special session in the interval between regular sessions, so as to make the sessions biennial, but with a definite limitation as to the subjects to be considered at the special session and as to its duration. Alabama in 1901 provided specifically for quadrennial sessions, and is the first state to provide that its legislature shall meet at such infrequent intervals. In 1902 a proposed constitutional amendment for regular biennial sessions was defeated in Mississippi; and in 1908 a proposed amendment for a return to biennial sessions was defeated in Alabama. The movement for less frequent legislative sessions will hardly turn backward, and the need for frequent sessions is disappearing with the enactment of ordinary legislation by constitutional amendment and revision, and with the adoption of the initiative and referendum as in Oregon where laws may be enacted without the participation of the legislature.

The restrictions upon local and special legislation have been brought about to a large extent by the abuse of legislative power, and will probably prove an advantage to the legislatures themselves by confining their attention to general measures, whereas legislatures have in the past devoted a large part of their time to local problems which might much better have been left to the local governments. Alabama, Virginia, and Oklahoma specify in detail a number of subjects upon which local, special, and private legislation may not be enacted; and such special legislation as may be enacted is subject to rules of procedure intended to prevent abuse. Special acts for the incorporation of cities have been forbidden in Alabama, Oklahoma, and Michigan. Virginia permits special legislation relating to the organization of cities and towns by a vote of two-thirds of all members elected to each house of the legislature.¹⁶

The Virginia constitution, besides forbidding special legislation upon a number of specified subjects, also requires that in other cases general laws be enacted whenever they may be made applicable, but expressly leaves it to the legislative discretion as to when special laws

¹⁶ A constitutional amendment rejected by Florida in 1904 proposed a great reduction in the power of the legislature of that state to enact local and special laws.

are needed, and is therefore not really a limitation upon legislative power. Oklahoma has a provision similar to that of Virginia, but does not expressly provide that the legislature shall have discretion to determine whether to act by special or general law. Alabama forbids the enactment of a special, private, or local law in any case already provided for by a general law, and makes the determination of this matter a judicial rather than a legislative question. The constitutional provision that "in all cases where a general law can be made applicable no special law shall be enacted" was held in Kansas to mean that the legislature was vested with discretion to determine when a general law could not be made applicable; it thus rested with the good faith of the legislature as to whether this constitutional provision should be observed;¹⁷ an amendment to the Kansas constitution in 1906 leaves to the courts the question whether a general law may be made applicable. The Michigan constitution of 1908 does not enumerate in detail the subjects upon which special laws may not be passed, but provides that the legislature shall pass no local or special act where a general act may be made applicable, and the question whether a general act could have been made applicable is made a question not for the legislative determination but for the decision of the courts. In Michigan local and special acts do not take effect until after they have been approved by a majority of the electors voting thereon in the district to be affected by such acts.

The new constitutions of Alabama, Virginia, Oklahoma, and Michigan, forbid the granting of charters to private corporations by special acts, and require that corporations be organized under general laws. Each of these four constitutions contains rather full provisions regarding corporations, more especially with reference to public service corporations. Oklahoma has gone further than any other state in the regulation of corporations by constitutional enactment, and has embodied in its constitution an elaborate code of corporation law, relating more particularly to public service corporations. Alabama authorizes its legislature to fix railroad rates. Michigan, whose former constitution granted the legislature power to fix railroad

¹⁷ This is the more general judicial position upon constitutional provisions of this character. Under such a holding the Oklahoma provision mentioned above would be given precisely the same effect as the provision in the Virginia constitution. Cooley, *Constitutional Limitations*, 181, note 4. *Indiana v. Kolsem*, 14 L. R. A. 566. American Digest, Century Edition, X, 1425; American Digest, Decennial edition, IV, 1623.

rates, now extends this power to express rates also, and permits the creation of a commission to regulate railway and express rates. Virginia transfers control over private corporations and over rates of public service corporations to a state corporation commission; this commission is required to proceed judicially in the fixing of rates, and from its decisions public service corporations have an appeal to the highest state court. Oklahoma has by its constitution established a corporation commission, modeled in large part upon that of Virginia. Louisiana, whose constitution of 1898 established a corporation commission similar to that of Virginia, in 1908 adopted constitutional amendments to prevent foreign corporations from bringing suit in the federal courts, and to penalize corporations contesting before the courts the rates which may have been fixed by the commission.¹⁸ Nebraska in 1906 by a constitutional amendment created a state railway commission with power to regulate the rates and services of common carriers.

Attention may be briefly called to several other movements discernible in recent constitutional development. In the Southern

¹⁸ These amendments will probably be held to be invalid when contested in the federal courts. The Louisiana, Virginia, and Oklahoma provisions for rate-making by judicial procedure were evidently intended to prevent the issuance of injunctions by inferior federal courts restraining the enforcement of rates after they had been made, inasmuch as by federal law writs of injunction may not be granted by any court of the United States to stay proceedings in any court of a state. The purpose of these state constitutional provisions has, however, been nullified by the Supreme Court of the United States in the case of *State Corporation Commission of Virginia v. Railroads*, decided November 30, 1908; in this case the Supreme Court held that rate-making is a legislative and not a judicial function, that judicial bodies in fixing rates are acting in a legislative capacity, and that an injunction may therefore be issued by the federal courts to prevent the enforcement of rates so fixed. This decision seems to warrant the statement that the states cannot devise any effective system of rate-making for intrastate traffic, for if rates are in every case subject to be enjoined by the inferior federal courts, a state rate will, even if finally upheld by the federal courts, not go into effect until after long judicial proceedings in each case. This is in effect to say that the states, although they are the only bodies having control over intrastate rates, will not be permitted to exercise their power of control except in the cases where they may do so in agreement with the railroads affected. It would seem that the Supreme Court might better have taken the view that injunctions should not issue by federal courts where private rights are properly secured by judicial proceedings in rate-making by the states, assuming that the corporation if it felt aggrieved would exercise its right of appeal from the highest state court to the Supreme Court of the United States.

States rapid progress continues to be made in the disfranchisement of the ignorant colored population; suffrage limitations were adopted by Alabama in 1901, Virginia in 1902, Georgia in 1908, and there is now pending in Maryland an amendment having the same object in view.¹⁹ The movement for the restriction of the suffrage has not, however, been confined entirely to the South. New Hampshire in 1903 adopted a constitutional amendment requiring that voters and office-holders be able to read the constitution in English and to write. Colorado in 1902 limited the suffrage to citizens of the United States, and thus withdrew this privilege from foreigners who had declared their intention of becoming citizens. Wisconsin in 1908 adopted an amendment limiting the suffrage after 1912 to citizens of the United States.

The movement to give the state governments greater power with reference to the improvement of highways continues, and in this respect there is a tendency to confer upon the legislatures power once taken away from them as a result of disastrous experiences in state conduct of or aid to internal improvements. California in 1902 gave its legislature power to establish and maintain state highways, and Michigan by a constitutional amendment of 1905 permits the state to improve or to aid in the improvement of wagon roads. An amendment adopted by New York in 1905 permits that state to contract a debt of fifty million dollars for the improvement of highways. By a constitutional amendment of 1908 Wisconsin is authorized to appropriate money for the construction or improvement of public highways. Missouri by amendments of 1906 and 1908 permits its counties and towns to levy taxes and to contract debts for the improvement of roads and bridges. An amendment adopted by Illinois in 1908 permits the legislature of that state to provide for the construction of a deep waterway connecting Chicago with the Mississippi river, at an expense not to exceed twenty million dollars.

In concluding the discussion of state constitutional development during the past eight years, the most important tendencies may be summarized as follows: (1) The disappearance of the distinction in form of enactment between statutes and constitutional amendments in the states which have adopted the initiative and referendum. (2) The increase of popular control over state legislation through the spread of the initiative and referendum, and through the enactment of statutory matter by constitutional amendment. (3) The increase of

¹⁹ A proposed amendment for this purpose was defeated in Maryland in 1905.

popular control in towns and cities through the granting to cities of power to frame their own charters, and through restrictions placed upon state legislatures as to local and special legislation; and through the introduction of the local initiative, referendum, and recall. (4) The slight increase in the power of the governor over the state administration, and the great increase of the governor's power over legislation. (5) The continued diminution of the power of state legislatures, through the adoption of methods of popular legislation, through express prohibitions upon legislatures with reference to special and local legislation, and through the increased power granted to the governor over legislation. (6) The efforts to subject public service corporations to more adequate control.²⁰

²⁰ During recent years there have been numerous amendments proposed with reference to state and municipal taxation. See a note on *Taxation—Pending Constitutional Revisions and Amendments*, by Robert Argyll Campbell in *American Political Science Review*, II, 427.